

SHB 1281 - S AMD 583

By Senators Hargrove, Stevens

ADOPTED 04/14/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) It is the intent of the legislature to
4 assist children in the care of kin to access appropriate medical
5 services. Children being raised by kin have faced barriers to medical
6 care because their kinship caregivers have not been able to verify that
7 they are the identified primary caregivers of these children. Such
8 barriers pose an especially significant challenge to kinship caregivers
9 in dealing with health professionals when children are left in their
10 care.

11 (2) It is the intent of the legislature to assist kinship
12 caregivers in accessing appropriate medical care to meet the needs of
13 a child in their care by permitting such responsible adults who are
14 providing care to a child to give informed consent to medical care.

15 **Sec. 2.** RCW 7.70.065 and 2003 c 283 s 29 are each amended to read
16 as follows:

17 (1) Informed consent for health care for a patient who is not
18 competent, as defined in RCW 11.88.010(1)(e), to consent may be
19 obtained from a person authorized to consent on behalf of such patient.

20 (a) Persons authorized to provide informed consent to health care
21 on behalf of a patient who is not competent to consent, based upon a
22 reason other than incapacity as defined in RCW 11.88.010(1)(d), shall
23 be a member of one of the following classes of persons in the following
24 order of priority:

25 ~~((a))~~ (i) The appointed guardian of the patient, if any;

26 ~~((b))~~ (ii) The individual, if any, to whom the patient has given
27 a durable power of attorney that encompasses the authority to make
28 health care decisions;

29 ~~((c))~~ (iii) The patient's spouse;

1 ~~((d))~~ (iv) Children of the patient who are at least eighteen
2 years of age;

3 ~~((e))~~ (v) Parents of the patient; and

4 ~~((f))~~ (vi) Adult brothers and sisters of the patient.

5 ~~((2))~~ (b) If the ~~((physician))~~ health care provider seeking
6 informed consent for proposed health care of the patient who is not
7 competent to consent under RCW 11.88.010(1)(e), other than a person
8 determined to be incapacitated because he or she is under the age of
9 majority and who is not otherwise authorized to provide informed
10 consent, makes reasonable efforts to locate and secure authorization
11 from a competent person in the first or succeeding class and finds no
12 such person available, authorization may be given by any person in the
13 next class in the order of descending priority. However, no person
14 under this section may provide informed consent to health care:

15 ~~((a))~~ (i) If a person of higher priority under this section has
16 refused to give such authorization; or

17 ~~((b))~~ (ii) If there are two or more individuals in the same class
18 and the decision is not unanimous among all available members of that
19 class.

20 ~~((3))~~ (c) Before any person authorized to provide informed
21 consent on behalf of a patient not competent to consent under RCW
22 11.88.010(1)(e), other than a person determined to be incapacitated
23 because he or she is under the age of majority and who is not otherwise
24 authorized to provide informed consent, exercises that authority, the
25 person must first determine in good faith that that patient, if
26 competent, would consent to the proposed health care. If such a
27 determination cannot be made, the decision to consent to the proposed
28 health care may be made only after determining that the proposed health
29 care is in the patient's best interests.

30 (2) Informed consent for health care for a patient who is not
31 competent, as defined in RCW 11.88.010(1)(e), because he or she is
32 under the age of majority and who is not otherwise authorized to
33 provide informed consent, may be obtained from a person authorized to
34 consent on behalf of such a patient.

35 (a) Persons authorized to provide informed consent to health care
36 on behalf of a patient who is incapacitated, as defined in RCW
37 11.88.010(1)(e), because he or she is under the age of majority and who

1 is not otherwise authorized to provide informed consent, shall be a
2 member of one of the following classes of persons in the following
3 order of priority:

4 (i) The appointed guardian, or legal custodian authorized pursuant
5 to Title 26 RCW, of the minor patient, if any;

6 (ii) A person authorized by the court to consent to medical care
7 for a child in out-of-home placement pursuant to chapter 13.32A or
8 13.34 RCW, if any;

9 (iii) Parents of the minor patient;

10 (iv) The individual, if any, to whom the minor's parent has given
11 a signed authorization to make health care decisions for the minor
12 patient; and

13 (v) A competent adult representing himself or herself to be a
14 relative responsible for the health care of such minor patient or a
15 competent adult who has signed and dated a declaration under penalty of
16 perjury pursuant to RCW 9A.72.085 stating that the adult person is a
17 relative responsible for the health care of the minor patient. Such
18 declaration shall be effective for up to six months from the date of
19 the declaration.

20 (b) A health care provider may, but is not required to, rely on the
21 representations or declaration of a person claiming to be a relative
22 responsible for the care of the minor patient, under (a)(v) of this
23 subsection, if the health care provider does not have actual notice of
24 the falsity of any of the statements made by the person claiming to be
25 a relative responsible for the health care of the minor patient.

26 (c) A health care facility or a health care provider may, in its
27 discretion, require documentation of a person's claimed status as being
28 a relative responsible for the health care of the minor patient.
29 However, there is no obligation to require such documentation.

30 (d) The health care provider or health care facility where services
31 are rendered shall be immune from suit in any action, civil or
32 criminal, or from professional or other disciplinary action when such
33 reliance is based on a declaration signed under penalty of perjury
34 pursuant to RCW 9A.72.085 stating that the adult person is a relative
35 responsible for the health care of the minor patient under (a)(v) of
36 this subsection.

37 (3) For the purposes of this section, "health care provider" and

1 "health care facility" shall be defined as established in RCW
2 70.02.010."

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3 On page 1, line 4 of the title, after "minor;" strike the remainder
4 of the title and insert "amending RCW 7.70.065; and creating a new
5 section."

EFFECT: Permits a person who has been given written authorization from a parent to consent to health care for a minor.

Makes the following technical changes:

Clarifies that a "legal custodian" is a person who is given authority over the child under the domestic relations statutes.

Clarifies that the document that must be provided is a declaration rather than an affidavit.

Clarifies that the adult who is representing himself or herself as being responsible for the health care of the child must state this in the declaration.

Clarifies that the health care provider may rely on both the representations and the declaration of the person claiming to be responsible for the health care of the child.

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